RELEASE FROM CRIMINAL LIABILITY FOLLOWING RECONCILIATION OF THE PERPETRATOR AND THE VICTIM VS. THE RECONCILIATION AGREEMENT: DEMARCATION ISSUES

In work questions of differentiation of institutes of release of the person from criminal liability in connection with reconciliation of the guilty person with the victim from conclusion of agreement about reconciliation between the victim and the suspect, the defendant are considered. The specified differentiation is carried out by the author of article on the basis of the analysis of standards of Criminal and Criminal procedure codes of Ukraine.

It is noted that the specified institutes differ in the legal nature of emergence and existence. If application of institute of the agreement on reconciliation between the victim and the suspect is based on norms of a criminal procedural law, then existence of institute of release from criminal liability in connection with reconciliation with the victim is based on norms of a substantive law.

The author has analysed a circle of subjects who can be initiators of reconciliation. So if as the initiator of reconciliation for application of article 46 UK of Ukraine the guilty person, the victim, their close relatives or acquaintances, employees of law enforcement agencies can act, vessels according to requirements of article 469 Criminal Procedure Code of Ukraine, the agreement on reconciliation can be concluded on an initiative of the victim, suspect or defendant.
It is established that a miscellaneous is also procedural registration of results of judicial review of reconciliation of the parties. By results of consideration of the agreement on reconciliation the court in preparatory court session can close criminal proceedings, having decided the relevant resolution, and considering the petition for release from criminal liability in connection with reconciliation with the victim – at a stage of preparatory production to pronounce a conviction.

The attention that in case of application of article 46 UK of Ukraine the person is exempted from criminal liability is paid. Approving the agreement on reconciliation, in the presence of the bases, the person can be exempted only from serving sentence with test.

In article arguments in favor of institute of release from criminal penalty in connection with reconciliation of the guilty person with the victim, application which by the legal nature is the most humane concerning the person who has committed a crime are also adduced.

By results of the analysis of standards of Criminal and Criminal procedure codes of Ukraine the author has come to a conclusion that institutes of release of the person from criminal liability in connection with reconciliation of the guilty person with the victim and conclusions of agreement about reconciliation between the victim and the suspect or the defendant aren’t identical, have the different legal nature, an order of realization and a consequence.